OUTER CONTINENTAL SHELF LEASING POLICIES

HEARING

BEFORE THE

SUBCOMMITTEE ON SBA AND SBIC AUTHORITY, MINORITY ENTERPRISE AND GENERAL SMALL BUSINESS PROBLEMS

OF THE

COMMITTEE ON SMALL BUSINESS HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

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OUTER CONTINENTAL SHELF LEASING POLICIES

THURSDAY, NOVEMBER 12, 1981

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON SBA AND SBIC AUTHORITY, MINORITY ENTERPRISE AND GENERAL SMALL BUSINESS PROBLEMS, COMMITTEE ON SMALL BUSINESS,

Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2359-A, Rayburn House Office Building, Hon. Parren J. Mitchell (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN MITCHELL

Mr. MITCHELL. Good morning. This hearing will now come to order.

Today's hearing will focus on the Department of Interior's regulation on nondiscrimination against minority- and women-owned business enterprises in the Outer Continental Shelf leasing activities. This regulation was published in final form in December 1980. However, on September 16, 1981, Secretary Watt published a rescission order in volume 46 of the Federal Register.

We have with us today several witnesses who will provide the committee with a complete factual analysis of the conditions and circumstances surrounding the need for the regulation and subsequent action to rescind such. For this reason, I will not go into this area at this time. I believe, however, that it is important for me to elaborate briefly on my concerns and the reasons for calling today's hearing.

Ladies and gentlemen, I have been in Congress for 11 years. In this short period of time, I have been a strong advocate for increasing the role of the Federal Government in assisting minority business owners to overcome the institutional barriers which prohibit access and participation in the free market system. One need only review the recent history of the Federal procurement system to establish a clear and convincing argument that prior to 1968, the Federal Government not only played a minimal role in assisting minority entrepreneurs, but in many cases it itself was a perpetrator of discriminatory practices. In fact, ladies and gentlemen, it was under the leadership of a Republican President that this Nation began to establish affirmatively, programs to correct past deficiencies. It was not, however, until 1978 that the Federal Government's procurement awards to minority-owned businesses exceeded 1 percent of the total Federal procurement budget of nearly $90 billion. Even today, with a total Federal procurement budget of

nearly $100 billion, minority business owners have not reached a 5-percent achievement level. Thus, while progress is being made, minority business owners are still not full and equal participants in this Nation's free enterprise system.

We just recently reviewed the activities of the Department of Defense, and we have seen in the last year a decline in minority procurement contracting efforts with that Department, a rather discernible decline.

In recent years, I have become encouraged by some large private-sector enterprises who have taken positive steps to provide contracting opportunities for minority business owners simply because it makes good business sense. Notwithstanding this ray of hope, I am equally concerned by the large number of big business concerns who are not receptive to minority business affirmative action programs. In a June 1981 hearing in Chicago, I was informed by representatives of the Small Business Administration that over 46 contracts had been awarded to large business concerns in violation of Public Law 95-507. From this perspective, I am leery of reducing across-the-board affirmative action requirements simply because a few big business concerns can prove a high performance of voluntary compliance. Contrary to the belief of some, I believe the holding in the *Fullilove* v. *Klutznick* case is still valid. In fact, there is an abundance of documentation that supports my underlying concern that racism remains a major force in this free market system. I remain confident, however, that there will continue to be progress so that the conditions giving rise to Public Law 95-507, *Fullilove* v. *Klutznick,* and other affirmative action programs will be ameliorated. Unfortunately, that day is not today.

In view of the above, today's hearing will focus on two general areas. First, what were the conditions setting forth the need for the discussed regulations? Second, what documented changes are available to support the argument that the regulation is not needed? This hearing, therefore, is a factfinding exercise. Upon a review of these facts, the committee will decide whether further hearings or other actions are necessary.

Subsequent to the preparation of my statement we received correspondence from the Secretary of the Interior which gives me some encouragement.

I ask unanimous consent that both documents be submitted for the record.

[The letter of Secretary Watt follows:]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 10, 1981.

Hon. PARREN J. MITCHELL,
Chairman, Committee on Small Business,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to inform you that after careful consideration, I have ordered the writing of regulations to assure non-discrimination against minority business enterprises in Outer Continental Shelf leasing activities.

For your information, enclosed is a copy of a memorandum commencing this action.

Sincerely,

JIM WATT, *Secretary.*

Enclosure.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C. November 10, 1981.

Memorandum to: Assistant Secretary—Energy and Minerals.
From: The Secretary.
Subject: OCS Minority Business Regulations.

Please initiate immediate action to issue appropriate affirmative action regulations governing OCS activities.

JIM WATT.

[NEWS RELEASE]

DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY

(For release November 10, 1981)

SECRETARY WATT ORDERS REGULATIONS TO ASSURE MINORITY BUSINESS OPPORTUNITIES IN OUTER CONTINENTAL SHELF OIL AND GAS LEASING PROGRAM

Secretary of the Interior James Watt said today he is ordering the writing of regulations to assure non-discrimination against minority business enterprises in Outer Continental Shelf (OCS) leasing activities.

The Secretary made the decision following a breakfast meeting this week with Dr. Henry Lucas, Jr., Chairman of The New Coalition for Economic and Social Change; Dr. Edwin Sexton, Jr., a board member of The New Coalition and consultant to The National Citizen Participation Council; and Rufus McKinney, Chairman of Blacks for Energy.

Dr. Lucas said, "The OCS program offers opportunities for minorities to participate in business enterprises in a field with tremendous growth potential, and I am extremely pleased that Secretary Watt has taken the initiative to assure that minorities will have the opportunity to compete in the development of our natural resources."

"If we are to help solve unemployment and improve the economy, it is essential that minorities be allowed to compete for business in the most effective way," Watt said. "Since the oil and gas resources of the OCS belong to all Americans, they should be managed to benefit all consumers and all Americans should have a fair shot at contributing to the development of these resources.

"By helping to assure minority participation in natural resource development, we are moving in a positive direction that should ultimately increase the number of available jobs," Watt said.

With today's announcement, the Secretary ordered that actions be initiated to institute appropriate action regulations.

Mr. MITCHELL. I think that decision makes this hearing more important, because it is clear that this subcommittee ought to be making some input into the rewrite of those regulations. Therefore I think the hearing takes on another added dimension of importance.

I would also like to submit for the record a letter from Mr. Charles DiBona, president of the American Petroleum Institute. We asked him to be here this morning. Unfortunately, he had a longstanding commitment out of the country and could not be here. I would ask unanimous consent that his letter be submitted for the record.

[Mr. DiBona's letter follows:]

AMERICAN PETROLEUM INSTITUTE,
Washington, D.C., November 9, 1981.

HON. PARREN J. MITCHELL,
Chairman, Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems, Small Business Committee, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of November 3, 1981, inviting me to testify before your subcommittee on November 12, 1981 on affirmative action for minority business in outer continental shelf leasing activity.

A long-standing speaking commitment out of the country will prevent me from appearing at the hearing. Since I cannot appear at the hearing, I would like to review the involvement of the Institute and its members in affirmative action activities.

The American Petroleum Institute is a national trade association whose membership includes more than 8,000 individuals and 320 companies. Many of these companies are engaged in oil and gas exploration and development on the outer continental shelf.

The Institute strongly supports equal opportunity in business enterprise for all segments of our society. Member companies have implemented effective affirmative action measures throughout their activities demonstrating commitment to this principle. Since purchasing for outer continental shelf activities actually occurs onshore as an integral part of each company's overall activity, it is not possible to isolate such expenditures. The following examples of such action by API member companies are from material available to us in the short time since the receipt of your letter. Later information would show even better performance. It should be noted that the examples from these companies were prepared on different bases and do not allow comparison of company action.

ARCO OIL & GAS CO.

ARCO has made major increases in the voluntary purchase of oil field supplies and services from minority businesses, which is illustrated by the following table:

[In millions of dollars]

Year	Purchase goal from minority businesses	Achievement
1977	2.0	3.5
1978	4.0	5.6
1979	5.5	6.4
1980	10.5	[1] 8.4

[1] As of July 1980.

CHEVRON OIL & GAS CO.

From a 1975 expenditure level of over four million dollars of business with minority owned firms, Chevron's affirmative action program has grown each year until, in 1980, a goal set at $30 million was exceeded. As of 1980 Chevron used 36 minority-owned banks for the deposit of company funds. In addition, a substantial percentage of Chevron dealerships are minority-owned or managed. In 1977, $170 million of Chevron business flowed through these establishments. Chevron has a well-established record of emphasizing the development of minority-owned business. Under this program in 1979 Chevron spent $23 million for services and materials with 750 firms. In 1980, Chevron embarked on an identification program sending out about 50,000 questionnaires to businesses requesting their identification as small businesses, as minority or women-owned.

CONOCO, INC.

Conoco has had a minority business coordinator in purchasing since 1978. He serves as a "middle man", helping vendors reach the appropriate manager. In 1979 Conoco placed $18.8 million with over 500 minority-owned firms. These included companies operated by Blacks, Hispanics, Indians and women. These vendors

ranged over a wide spectrum of pipe suppliers to pencil manufacturers, truckers to geophysicists, maintenance firms to employment agencies.

EXXON CO. U.S.A.

Exxon, since 1974, has voluntarily made purchases of over $177,000,000 from businesses owned by socially and economically deprived individuals. In 1974 Exxon made dollar purchases of approximately $5,000,000 from approximately 300 minority vendors. In 1980 Exxon's purchases from such concerns had risen to more than $55,000,000 from approximately 1,200 vendors. The following table reveals the growth of Exxon's voluntary affirmative action program:

AFFIRMATIVE ACTION PROGRAM

Year	Millions	Number of vendors
1974	$5	300
1975	10	700
1976	15	860
1977	21	950
1978	31	1,000
1979	40	1,100
1980	55	1,200

Additionally, in 1980 Exxon made purchases of approximately $13,000,000 from 200 different women-owned business enterprises.

MARATHON OIL CO.

Since 1977, the number of minority-owned firms with which Marathon has done business has doubled. Marathon has administered a company-wide affirmative action program to further utilize minority-owned business enterprises in its procurement activities. Marathon is an active member of the Houston Regional Minority Purchasing Council. Marathon regularly sends representatives from the Purchasing Department to trade fairs sponsored by minority and female-owned businesses.

MOBIL OIL CORP.

In 1971 Mobil Oil Corporation instituted a special purchasing program including not only minority enterprises, but also women-owned/operated firms, small businesses and concerns located in labor surplus areas. Mobil has purchases of tens of millions of dollars with minority-owned business enterprises and women-owned business enterprises, and provides technical and management assistance to those businesses so they may become more competitive sources for needed goods and services. Mobil also supports organizations offering financial and commercial development assistance to these businesses.

SHELL OIL CO.

Since 1971 Shell Oil Company has directed more than $190 million into the minority business community. In 1979 Shell purchased approximately $34 million in goods and services from minority vendors. In 1980 Shell's purchases from minority-owned business totaled approximately $47 million. This represents an increase of 39 percent over the 1979 figure. Today more than 650 businesses are included in Shell's Minority Vendor Program as sources for many services and commodities ranging from office supplies to large, complex engineering projects. Shell has sought out minority-owned businesses which have had the capability to satisfy their operating needs. They have encouraged their contractors to make concerted efforts to identify areas for which minority vendors may have the potential of becoming a source of supply to them.

STANDARD OIL CO. (INDIANA)

Standard's commitment to affirmative action is long-standing. More than 20 years ago Standard launched its first minority business efforts. In 1971 Standard intensified and renewed its purchasing commitments with a new integrated affirmative action program. By 1975 purchases from minority business enterprises totaled $18

million or nearly 30 times what was spent in 1970. By 1978 purchases totaled $52.3 million. The next year purchases totaled more than $75.4 million from some 650 minority business enterprises in forty-one states. Purchases from 121 of these businesses exceeded $100,000. In 1980, the purchases under the affirmative action program totaled over $116.1 million, an increase of 54 percent over 1979, and more than double the amount purchased in 1978. Purchases from 133 of these businesses exceeded $100,000. Since 1971 Standard's purchases from minority business enterprises have increased at an annual compounded rate of 48 percent. Total purchases since 1970 have exceeded $350 million.

There are but a few examples of the programs aimed toward expanded business involvement with minority and women-owned enterprises engaged in by companies in the oil industry. Many other API member companies have similar records of accomplishment. The progress made in the past few years can be expected to continue and accelerate in the years to come.

In view of the activities of its members, the Institute had a keen interest in the Department of the Interior's notice of proposed rulemaking on nondiscrimination against minority and women-owned business enterprises issued in the Federal Register of May 9, 1980. We submitted comments on the proposal on August 7, 1980, in which we supported equal opportunity in business enterprise and stated our view that the proposed regulations were unnecessary since voluntary programs like those discussed above and existing federal programs would accomplish the purpose better. We were particularly concerned that the proposal presented were impracticable, inconsistent with applicable legal standards and might lead to unsound business practices. It also appeared to impose unnecessary administrative burdens and operational delay. Additionally, we believed that the adoption of this affirmative action program could compromise the effectiveness of ongoing equal opportunity and affirmative action programs conducted by member companies voluntarily or through other federal programs.

Many of our members and several other organizations expressed similar concerns in separate comments. The final rule adopted by the Department of the Interior in the Federal Register of December 3, 1980 did not address these concerns effectively. Subsequently, we wrote to both the Secretary of the Interior and the Chairman of the Presidential Task Force on Regulatory Relief requesting that the final rule be reviewed. The Institute filed comments with the U.S. Geological Survey supporting the proposal to rescind these regulations published in the Federal Register of June 4, 1981.

I hope that you will find this to be a useful review of the Institute's activities in the areas to be discussed at your Subcommittee's hearings on November 12, 1981.

Sincerely,

CHARLES J. DIBONA, *President.*

Mr. MITCHELL. We will make copies for all of those who might come in, and we have it in the record, also. Does any member on the minority side, and I always feel so ill at ease using that phrase—does anyone care to make an opening statement?

Mr. STATON. Thank you. We are going to do what we can to see that that is changed, but I have no opening statement.

Mr. DAUB. Mr. Chairman, you could refer to us as numerically disadvantaged.

Mr. MITCHELL. That is also not quite appropriate, based upon some of the statements that have been made by administration members recently. I would hesitate to use that.

Mr. DAUB. I appreciate your leadership in this particular committee hearing, and we are certainly looking forward to the testimony that will be offered.

Mr. MITCHELL. Our first witness, James Joseph, has just walked in. We are delighted—I understand he was scheduled to be some other place in the country, flew in for the hearing, and will fly out immediately after his testimony.

Mr. Joseph, we have a copy of your testimony, and you may proceed as you see fit. You may either read your entire testimony or highlight portions of it.

TESTIMONY OF JAMES A. JOSEPH, VICE PRESIDENT, CUMMINS ENGINE CO.

Mr. JOSEPH. I would like to submit my prepared statement for the record and summarize a few concerns.

Mr. MITCHELL. If you will hold for just a moment, there is one development that you might not have picked up.

Mr. JOSEPH. I think I was informed about it on the way in.

Mr. MITCHELL. That we did get correspondence from Mr. Watt, the Secretary of the Interior, where he is going to reconsider his position. It is important that we have these hearings so input can be made, hopefully, to the Department of the Interior in the writing of new regulations.

Mr. JOSEPH. I hope that means that Mr. Watt will eventually rescind his rescission, but I am pleased to hear that he has decided to take another look.

Let me begin by congratulating you, Mr. Chairman, and members of this committee for the tenacity that you have demonstrated in trying to assure that minority businesses have access to the marketplace. At a time in which we are engaged in a great debate in society about the role of the private sector in meeting social needs, it is very important that we look at things like the opportunity for minorities to participate in Outer Continental Shelf leasing activities.

The 1980 rule on minority- and women-owned business enterprises in Outer Continental Shelf leasing activities established a Federal program to implement section 604 of the OCS amendments of 1978. It is important to remember that we are not just talking about regulations per se or rules, we are talking about the establishment of a program to implement the mandate of the Congress.

Now, the 1980 rule described new practices and procedures under which the Director of the U.S. Geological Survey would receive, evaluate, and act upon plans for the procurement of goods and services submitted by those companies holding leases on the Outer Continental Shelf. On September 16, 1981, the Secretary of Interior rescinded the 1980 OCS rule on the grounds that they were not necessary, that industry had good voluntary programs in this area, and that there was sufficient authority for Federal regulations. He has now agreed to take a look at that and to review it, and I am pleased.

As Under Secretary of the Interior and now as a member of the senior management of a transnational business corporation, I personally deplore unnecessary and ineffective regulations. I am strongly supportive of regulatory reform and continuing review of Federal rules, but I do not share the vision of the future nor the view of human nature held by those critics who regard formal regulations as an unnecessary form of social discipline. My skepticism is enhanced by the fact that many of those who now argue that they could do a better job if minority business regulations were rescinded are the very same people who were doing nothing to facilitate minority business participation before there were regulations.

I have spent a considerable amount of time with minority businessmen. As president of a foundation supporting minority enterprise development, as a member of the board of directors of the

Opportunity Funding Corporation, and as one of the founders of the cooperative assistance fund, a program-related investment arm of American Foundations, I can tell you as a result of my accumulated experience that voluntary programs to encourage minority business participation in Outer Continental Shelf leasing activities are hard to find. But let me add, even if such programs do exist in one or two enlightened corporations, we should not place these companies at a competitive disadvantage for doing unilaterally what should be done by their competitors and their customers.

I believe that national standards of responsibility should be required as a condition of the social contract between business and society. It is not only in the self-interest of business to have these standards clearly defined, but it is clearly in the national interest of a society whose system of government is based on the promise of equal access to the marketplace.

Mr. Chairman, the second and final point I would make is that the OCS minority business regulations are based on statutory authority which is clearly delineated in the OCS amendments of 1978. In addition, that authority is a central part of the legislative history of that act and of the entire Federal scheme having to do with minority business. So, I would argue that the OCS regulations are both required by statute and required by the realities of the marketplace. I believed that in 1978 when we proposed that section 608 be included in the OCS amendment, and I continue to believe that in 1981.

I urge this committee, therefore, to require as a minimum that anyone proposing an alternative approach define for you an acceptable procedure for implementing the intent of the Congress. I do not personally believe that an effective alternative is either available or desirable, but I am willing to wait for Secretary Watt's review and I am willing to give him the benefit of the doubt that he is committed to increase minority business participation on the Outer Continental Shelf if he establishes a program for meeting the statutory requirement placed upon him by the Congress.

Statements of good intention are not sufficient. Condemnation of the regulatory system of the Federal Government may in some cases be justified, but we need good rules rather than no rules at all. What we need is a program to implement the minority business provisions of the OCS act rather than no program at all. To ask that any agency of Government obey the law does not seem to me to be asking too much.

Thank you very much. I will be pleased to answer any questions.

[Mr. Joseph's prepared statement follows:]

PREPARED STATEMENT OF JAMES A. JOSEPH, VICE PRESIDENT AND ASSISTANT TO THE CHAIRMAN, CUMMINS ENGINE CO., FORMER UNDER SECRETARY OF THE DEPARTMENT OF THE INTERIOR

Mr. Chairman, I am pleased to appear before this committee again to discuss a matter of great concern to both of us. I want at the outset, therefore, to congratulate you on the tenacity you have shown in following through on your commitment to assist minorities in gaining access to the marketplace.

Section 604 of the Outer Continental Shelf Land Act Amendments of 1978 was included in Public Law 95-372 because the Congress shared this committee's view regarding the significance of minority enterprises. At a time when there is increasing public recognition that the private sector must take new initiatives to meet social needs, it is altogether fitting and proper that we look at how the private and

public sectors can co-operate in increasing opportunities for minority business in Outer Continental Shelf leasing activity.

The 1978 OCS amendments specifically stated that each agency or department given responsibility for the enforcement of the Act shall promulgate such rules as it deems necessary to carry out the purpose of its antidiscrimination provisions. It went on to require that any rules promulgated under this section "shall be similar to those established and in effect under title VI and title VII of the Civil Rights Act of 1964."

Both the amendments and the legislative history make it exceedingly clear that the authority for issuing regulations to enforce the provisions of the Act is provided by the statute.

The following statement appears in the House Report concerning Section 604: "During consideration of the OCS amendment during the 94th Congress, some concern was expressed that several Federal programs designated to assure equal employment and contracting opportunity might not be automatically applicable to activities on the Outer Continental Shelf. To insure that such provisions are applicable to OCS procedures, the committee adopted this section that provides that all agencies responsible for the promulgation and enforcement of regulations relating to the OCS shall take such affirmative action as they deem necessary to assure equal opportunity to all persons. Such equal opportunity must be provided as to all activities associated with exploration, leasing, development and production and specifically includes employment, bidding and awarding of contracts and subcontracts. The term "affirmative action" is intended to include the provisions under Executive Order 11296 and to be interpreted like those policies, rules, regulations and orders of the various Federal departments and agencies already implementing that order. Similarly enforcement of rules as to equal opportunity under this section should be substantially as those that appear in the various provisions and rules of agencies and departments relating to title VI of the Civil Rights Act of 1969 and rules as to appropriate sanctions and penalties for noncompliance should be based on the range and nature of the sanction and penalty provisions applicable under title VI of the Civil Rights Act of 1964."

The issue has been raised as to whether or not the Department of the Interior had legal authority to issue the rules on OCS leasing published in the Federal Register on December 3, 1980. In fact, the U.S. Geological Survey in carrying out Secretary Watt's orders to rescind the rules sought to make the argument that they were legally deficient.

Let me speak to that issue by referring not simply to the clear authority of Section 604 and the legislative history of the 1978 OCS amendments but by reviewing the overall federal scheme to assist minority business enterprises which have traditionally been excluded from mainstream markets.

In 1953, the Small Business Act was enacted by the Congress. The declaration of policy is stated in Section 631(a): "(a) The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchase and contracts or sub-contracts for property and services for the Government (including but not limited to contracts or sub-contracts for maintenance, repair, and construction) be placed with small business enterprises, to insure that a fair proportion of the total sales of Govenment property be made to such enterprises, and to maintain and strengthen the over-all economy of the Nation."

Section 633 creates the Small Business Administration (SBA) in order to carry out the policies, enumerated above. The SBA has the following principal functions: (1) To make loans to small business, and to make disaster loans (§ 636); (2) To enter into procurement contracts with other federal agencies, and to perform under these contracts by subcontracting with small businesses (§ 637); (3) To provide technical and managerial aids to small businesses (§ 637), and (4) To assist small businesses in obtaining Government contracts (§ 644). On October 24, 1978, the Congress passed new amendments to the Small Business Act, P.S. 95-507, which broaden the authority of the Small Business Administration to provide assistance to minority and small business enterprises.

In March of 1969, then President Nixon issued Executive Order 11458, which set forth a national policy of fostering minority business ownership and development. This Order led to the establishment of the Office of Minority Business Enterprise within the Department of Commerce to provide Business assistance services to prospective of existing minority entrepreneurs. In October of 1971, E.O. 11458 was superseded by E.O. 11625 which requires all federal agencies to increase their efforts toward promoting minority business enterprise. *Contractors Assoc. of Western Pennsylvania* v. *Kreps*, 441 F. Supp. 936, 951 (note 8) (W.D. Pa. 1977), aff'd 573 F. 2nd 811 (3rd Cir. 1978).

Currently, minority business enterprise affirmative action efforts are focused on the area of Government procurement contracts. 41 CFR 1-1.1300 (1977) contains the policies, procedure, and contract clauses applicable to the participation of minority business enterprises in Government procurement both at the prime and subcontract level. The regulations of this subpart are designed to carry out the proposes of E.O. 11458 as superseded by E.O. 11625. Section 1-1.1310-2 sets out the clauses to be included in procurement contracts, as well as other procedures to be followed by federal agencies.

The Department of the Interior's regulations concerning the implementation of its program to increase contracting participation of minority business enterprises were published in 43 Fed. Reg. 41207 (September 15, 1978). The notice states that this program is authorized and required pursuant to E.O. 11625 and 43 CFR 1-1.1302(a). The program is in addition to the SBA's small business set aside program, operated pursuant to section 8(a) of the Small Business Act (15 U.S.C. § 637(a) and prescribed under 41 CFR 1-1.713 (1977).

The legislative history of Section 604 of the OCSLA states that affirmative action efforts shall be taken to assure equal opportunity in leasing and the awarding of contracts and subcontracts. It also states that the section was enacted to insure that other federal programs designated to assure equal employment and contracting opportunity would also apply to the OCS procedures regarding the issuance of mineral leases.

Section 604 of the OCSLA is very similar to the legislative provision requiring equal opportunity in the Alaska Oil Pipeline. Pursuant to Section 403 of P.L. 93-153, the Department of the Interior wrote regulations to assure nondiscrimination in employment, services and procurement practices on that Pipeline project.

Therefore, based on the language and legislative history of 604 as well as the breadth of E.O. 11625, there is clear authority to apply the minority business enterprise scheme to the issuance of mineral leases, especially with respect to any contracting or subcontracting in connection with any lease (the latter being analogous to the Federal Procurement Regulations, 41 C.F.R. 1-1.13 et seq.) This scheme would primarily involve requiring the types of assurances of mineral leases that are presently required of contractors pursuant to clauses included in certain procurement contracts.

It should be noted that Section 604 not only provides authority for a minority business program, but also provides authority for affirmative action and nondiscrimination programs in the areas of both employment and services. There are a number of authorities upon which existing governmental efforts in these areas are based, including Title VI of the Civil Rights Act of 1964, E.O. 11246, and implementing regulations.

Having now discussed the legal authority for regulations to provide greater access for minority business in OCS leasing activity, I want now to say a word about the argument that regulations are unnecessary. It is now being suggested that there is a history of voluntary commitment and programs in the energy industry aimed at providing equal opportunity for the socially and economically disadvantaged, and that the reports and records of such activities are already provided to other Federal Agencies.

As Under Secretary of the Interior, and now as a member of the senior management of a transnational business corporation, I deplore unnecessary and ineffective regulations. I am strongly supportive of regulatory reform and continuing review of Federal rules. But I do not share the vision of the future nor the view of human nature held by those critics who regard formal regulations as an unnecessary form of social discipline. My skepticism is enhanced by the fact that many of those who now argue that they could do a better job if minority business regulations were rescinded are the very same people who were doing nothing to bring this about before there were regulations.

I have spent a considerable amount of time with minority businessmen and they know nothing about these great voluntary programs which are supposed to exist in Outer Continental Shelf oil and gas activities. Even if such programs do exist in one or two enlightened corporations, we do not wish to see these companies placed at a

competitive disadvantage for doing what is now being asked of them by corporate responsibility advocates. I believe that national standards of responsibility and opportunity should be required as a condition of the social contract between business and society. It is not only in the self-interest of business to do so but clearly in the national interest of a society whose system of government is based on the promise of equal access to the marketplace.

To refuse to define and implement the minimum requirements of Section 604 of the 1978 OCS Amendments is to deny equal opportunity for that group of people in the minority community who believe that a market-oriented economy and enterprise development are crucial to our national well-being. Like me, they believe that no regulation should be cast in concrete; for what is today's wisdom may be tomorrow's folly. But review and revision are fundamentally different from rescission.

Mr. Chairman, I believe that the OCS minority business regulations are based on statutory authority and required by the realities of the marketplace. I believed that in 1978 and I continue to believe it in 1981. But I would urge this committee to required as a minimum that anyone proposing an alternative approach define for you an acceptable procedure for implementing Section 604.

I do not personally believe that an effective alternative is either available or desirable, but I am willing to be convinced that Secretary Watt is committed to increased minority business participation on the Outer Continental Shelf if he has an alternative plan for meeting the statutory requirement placed upon him by the Congress.

The OCS minority business rules published in the Federal Register on December 3, 1980 remain the only evidence of a proposed program for the active participation of business enterprises owned and controlled by minorities and women in all activities related to leasing of the Outer Continental Shelf. The rule issued on September 16, 1981 rescinding the 1980 regulations has led to a situation in which an executive agency has chosen to directly violate the intention of a statute which required the responsible agency or department to promulgate rules to carry out the purposes of that Act. Statements of good intention are not sufficient, condemnation of the regulatory system of the Federal government may in some cases be justified, but what we need are good rules rather than no rules at all.

Thank you.

Mr. MITCHELL. Thank you. You are a very valuable witness because of your former position with the Department of the Interior as the Under Secretary, and because of your position now as vice president with the Cummins Engine Co. You are able to see—you have had an opportunity to have a look-see at the problem from both sides, and I think it is awfully important. Have you followed at all the extent to which, up to this point, minority businesses have been engaged at any level in the OCS operation?

Mr. JOSEPH. Yes; I have, Mr. Chairman. As a matter of fact, one of the things I tried to do as Under Secretary was to make sure that the doors were open and that there was access. In the process I spent a lot of time with minority businesses that were interested in doing business on the Outer Continental Shelf, and I have talked to some of the large companies. I have personally presided over some of our lease sales as we leased the OCS areas to the oil companies, so I am very familiar with the whole process.

Mr. MITCHELL. Would you have knowledge of the extent to which any minority firms have been involved in the development thus far of the Outer Continental Shelf?

Mr. JOSEPH. There are almost no firms involved at all, and when one talks about exploration and development on the OCS, there are none. When one talks about onshore support for offshore activities, there are a few companies that have occasionally gotten small and marginal contracts, but there is no significant involvement.

Mr. MITCHELL. I am speaking primarily to that portion of your testimony which points out the necessity for some sort of regula-

tions, good regulations to insure minority and women's participation in Federal Government procurement. And I wanted to ask you, have you kept up at all since you left Interior with the developments on the natural gas lines project, the western leg and the leg from Alaska?

Mr. JOSEPH. I have kept up as a concerned citizen. I have not had access to any special information or special policies. But as a concerned citizen I have kept up, yes.

Mr. MITCHELL. Would you have any recollection as to the extent to which minority businesses have been involved in either of these two legs of the gas line?

Mr. JOSEPH. My understanding is that they have been involved in a very limited or almost no way at all.

Mr. MITCHELL. That is my impression, also. At a legislative weekend in September, this issue was discussed, and I will turn to counsel in case I am wrong, but I believe that insofar as the western leg was concerned—only $5 million have been let to minority businesses out of a grand total of—what was the figure, do you remember? It was approaching $1 billion.

Mr. JOSEPH. And when one considers the total estimate of that project, Mr. Chairman, I think you are absolutely right by following it diligently.

Mr. MITCHELL. Thank you.

Mr. DAUB. With respect to the Alaskan Natural Gas Pipeline Act, was it a 20-percent mandate for minority procurement or 15 percent? Does the chairman recall?

Mr. MITCHELL. I do not recall. It seems to me vaguely I remember a 15-percent mandate, but that was not fixed by law.

Mr. JOSEPH. It was not fixed by law.

Mr. DAUB. I believe it was set by regulation, was it not?

Mr. JOSEPH. It was set by regulation, yes, but I cannot remember whether it was 15 or 20 percent.

Mr. DAUB. If I understand it to date, in fact they are exceeding that particular—meeting or exceeding that guideline at this point.

Mr. MITCHELL. I will certainly have to check into that. I was referring to the testimony we heard in September that was with reference to the western leg rather than the Alaskan leg.

Mr. DAUB. Right.

Mr. JOSEPH. I certainly would like to see some documentation of that. It certainly is not my understanding. But I have only followed it as a concerned citizen. I do not have any actual reports.

Mr. DAUB. My lawyer counsel worked for one of the companies that is involved in that particular endeavor on the western line, and I believe we are finally catching up and exceeding the prescriptions of the regulation. I think we should know that.

Mr. MITCHELL. We will ask staff to follow through and make sure we get some accurate information on that.

Mr. Staton?

Mr. STATON. Thank you, Mr. Chairman.

I guess I would like to ask first a question of philosophy here, in that given our framework of social interaction here in this country, should not our goal be that companies voluntarily and of their own accord participate in minority businesses as opposed to doing so at

the direction of regulation or law? Would that be your feeling, also?

Mr. JOSEPH. In an ideal world, this is certainly the case, but in the real world in which we have been involved and in which I have personally been involved as a businessman for a number of years, I know that it is necessary to have some standards. It is also necessary to require that they be met because the society says it wants the private sector to help to meet social needs through its normal work in the private sector. I am not talking about charitable contributions.

The second reason I say that is because I know what is presently happening, and in the absence of regulations we are not providing equal opportunity; so that does not give me any optimism for believing that a voluntary program will get it done.

Mr. STATON. But it is your goal as well as mine that that be the case?

Mr. JOSEPH. Yes. I said in my statement that I do not share the view of human nature which holds that we will reach a point where regulations will not be necessary as a form of social discipline.

Mr. STATON. I am going to read from the testimony of the president of the American Petroleum Institute a few figures I think are interesting. For Arco Oil & Gas, which had a major share in the OCS, in 1977 their goal to purchase from minority businesses was $2 million; they in fact purchased $3.3 million. In 1978, $4 million, they did $5.6 million. In 1979, $5.5 million, they went to $6.4 million. In 1980, $10.5 million; as of July 1980 it was already $8.4 million. Chevron had a $30 million goal, which was exceeded. Conoco, $18.8 million with over 5 minority-owned firms. Exxon since 1974 has purchased over $177 million from businesses owned by socially and economically deprived individuals. The record basically continues, and I guess to quote a former great American who popularized this statement, "If it ain't broke, don't fix it"—Bert Lance said that—I would offer that this appears on the surface at least to be a fairly good record of voluntary participation. Would you agree with that?

Mr. JOSEPH. Absolutely not, Congressman. I have spent too much time working with corporate responsibility activities of business to look at figures in isolation. I would have to look at each of those figures in the context of their total procurement and purchasing. To say that a company has done $1 million or $2 million does not say much unless I see whether or not that is 10 percent of $20 million or 1 percent of $200 million. That is the first answer.

The second answer, is analogous to the corporate charitable contribution deduction. I know some companies that are doing 5 percent, and I know other companies that are doing some significant programs, but whereas they are allowed a 5-percent deduction, the national average is less than 1 percent. I am saying that even though you may find one or two companies, and that is laudable, doing a good job, we would like to have the whole industry doing a good job; so it is appropriate that there be national standards set.

I do not think these standards ought to require an extraordinary administrative burden. I do not think they should be extraordinarily complex, but I think it is the responsibility of the Government

working in partnership with the private sector to lift before the private sector standards that it should meet, and these ought to be based on reality.

Mr. STATON. The Secretary of Interior announced that these regulations would be reconsidered. How do you respond to a proposal from companies that could show affirmative action be exempt from OCS guidelines?

Mr. JOSEPH. I am not sure I understand the question.

Mr. STATON. How would you respond to a proposal that companies which could show affirmative action plans based on the requirements of other Government agencies be exempt from the OCS guidelines?

Mr. JOSEPH. If you look at the final rules published in December of 1980 in the Federal Register, you will see our analysis of public comments. There were people who suggested that there was no need for OCS regulations because of other Government regulations. If you look at the series of Executive orders, look at the whole Federal scheme for minority business participation, you will find that there are no regulations dealing with the OCS leasing activity. If you look at the legislative history and the discussions taking place when the amendments were considered and section 608 was adopted, there was uncertainty as to whether or not those regulations would apply. That is why 608 authorized agencies to promulgate rules to implement the intentions of that provision.

Mr. STATON. How about a proposal that the regulations would take effect only upon activation of some type of trigger mechanism such as the finding of discrimination?

Mr. JOSEPH. This is a broader discussion about how you achieve social goals. To apply it in this context, I would say a couple of things. I think it creates an unnecessary cost and administrative burden to do an analysis of something that is self-evident. You and I know, and it takes only a casual look—you know that there is already self-evident truth that there is not sufficient minority business participation. For us to engage in a 3-year study to find out what we already know and then issue a finding of discrimination, would be a waste of the taxpayer's money. So my response at the time in which we were considering this is that we had enough facts to know that the regulations were needed. In addition, the Congress has said to us that we ought to promulgate rules to do this, so it is not necessary to engage in a long study to show that there is discrimination.

Mr. STATON. Do you have a figure in mind, let us say for example, Chevron Oil was putting 20 percent of their purchases to minority business—I do not know that they are, I am using that as an example—if Chevron Oil could demonstrate that it is doing that, would you agree that they should be exempted?

Mr. JOSEPH. It depends on the degree of exemption. I think there should be a continuing reporting relationship so that the Government could ascertain whether or not they are continuing to do that. To have done it once is laudable, but what we would like to do is to see this become a part of regular practice, so it would be necessary to have some way of continuing to monitor it to see that it continues to happen.

Mr. STATON. I have no further questions, Mr. Chairman.

Mr. MITCHELL. Thank you. I have one or two more. I would like to touch on the private sector's opposition to the regulations for affirmative action. My colleague just cited four of the companies that are mentioned in Mr. DiBona's letter about their having done a good job. It is curious to me that these are the four companies that led the fight against any affirmative action, Exxon, Gulf, Conoco, and Marathon. Those are the four that challenged the rule. It seems curious that they are doing such a good job. Why would they bother to challenge the rule?

Mr. STATON. Mr. Chairman, could you yield?

Mr. MITCHELL. Yes.

Mr. STATON. If I were one of those companies and felt that I had been doing a good job in meeting this particular proposed requirement, then I think I would feel that indeed the regulation was unnecessary because of the additional paperwork that it would probably generate. I am not putting words in their mouth, but that would appear to be a reasonable response.

Mr. MITCHELL. That is a possibility, but I note that there are eight companies mentioned in the correspondence from the American Petroleum Institute. Indeed, you have 20 major petroleum people involved in this operation. If there were eight, I guess there was some sort of gentleman's agreement that four of these, maybe because of their good record, would lead the opposition.

Mr. Joseph, what would be some of your recommendations for improving the regulations we are discussing? Do you have some specific recommendations you would like to make?

Mr. JOSEPH. I do not have any recommendation to improve. I think we went through a very thorough process of public comment and analysis, and after receiving all of the comments, we revised regulations and in the public notice published in the Federal Register indicated areas where revision had taken place as a result of recommendations that came from the industry and elsewhere. I think that the rule that was in place before it was rescinded is the best effort that can be made to make the compromises necessary in terms of administrative burden and still have national standards which are required. So I do not have any recommendation to improve those rules, but I would recommend that if anyone is going to rescind those rules that you ought to see that they have an alternative program to meet the requirements of section 604.

Mr. MITCHELL. Thank you very much. What city are you doing next?

Mr. JOSEPH. I am going back to Indiana. Mr. Chairman, could I add one note?

Mr. MITCHELL. Sure.

Mr. JOSEPH. The comment was made that those companies that are doing well in this area would not like to see regulations. I represent a company that has historically been a leader in corporate responsibility efforts, both in charitable contributions, minority procurement, et cetera. Ideally I would not like to see regulation, but in the real world I know that only a few of us are doing it, and that the only way in which we are going to get most doing it is for it to be required.

Mr. DAUB. Mr. Chairman.

Mr. MITCHELL. Mr. Daub.

Mr. DAUB. We hoped in my case, in Omaha, Nebr., we would have welcomed your company to an industrial park, if you recall. I hope that option may still exist some day.

Mr. JOSEPH. I hope so, too.

Mr. DAUB. I appreciate your insight to the purpose of the hearing. Why did you not receive any comments when you were undergoing basically—very many comments to the proposed regulation in the beginning? What do you think accounted for that?

Mr. JOSEPH. Why did we not receive comments?

Mr. DAUB. In favor of the originally proposed regulations, and why were they adopted without major change? Just your opinion.

Mr. JOSEPH. They were adopted with change.

Mr. DAUB. Major change.

Mr. JOSEPH. It depends on what you call major. We even redefined the word minority in those regulations. We did a lot of things I would consider major. In terms of minority comment, many of the minority businesses have not been involved in this area of activity and so consequently did not make any comments. This was early on. I think more would comment now since they are aware of this opportunity. Many of the comments we got were from companies that were very sophisticated about the process, but there were many companies, particularly the minority and women business enterprises, who would comment now that did not comment then.

Mr. DAUB. What are some of the realities that need to be contemplated, the overview of fair regulation that you think are necessary?

Mr. JOSEPH. The first reality is that most chief executive officers of business corporations and all of the major business organizations are now saying that we need private-sector initiatives to meet social needs. The President is saying that, the heads of the major corporations, the heads of the business organizations. Now, what they need, after having affirmed that as a commitment, what they need are some direct strategies and plans. One of the ways in which they can implement what they are saying is through means other than charitable contributions. I would like to see them give minorities an opportunity to participate in the mainstream of the marketplace.

The reality is, and it is a very conservative tradition of self-help in this country, that private enterprise provides employment—and we know that small businesses provide a lot of that employment—those good intentions being expressed have to be given concreteness by things like this, with a specific plan and a specific opportunity, and here is an opportunity.

Now, the reality of the marketplace on the second hand is that it is dominated by large companies, and minority companies have access to this in leasing in oil and gas exploration only in a very secondary way and only a limited amount, and that is the reality.

Mr. DAUB. Would it be farfetched to think of an analogy something like a peanut allotment or a tobacco license certificate, the danger potentially in the future, the out years, by such regulation, saying all right, we are going to give x, direct access to x percentage of the square miles of Outer Continental Shelf opportunity to socially disadvantaged minority enterprise, and that we would by that very law, by that very set-aside, if you will, create the oppor-

tunity to give, be it women or to any other minority, a very exclusive piece of the free enterprise pie that can be utilized in a way which we abhor when it comes to the exclusivity of the tobacco or peanut system?

Mr. JOSEPH. We are not here for a set-aside.

Mr. DAUB. Do you not ultimately get to the same thing by establishing a system of percentage, of requirement, and what do you do if you do not meet it, if you fall 1 percentage point short?

Mr. JOSEPH. We are not talking about a percentage of the OCS area, because we have to deal with a lot of things like technology and the other things involved in oil and gas exploration. We did not say if we lease areas, if there are 70,000 acres for lease, that 30,000 or 10,000 will go to minorities. We did not say that at all. The leasing activity is not what most concerns us at this point. We are aiming at the support activities of those companies that acquire leases. These activities involve everything from procuring rigs to catering for personnel who work out on the OCS. In doing this business they ought to make certain that minorities have an opportunity to participate; and it is important to recognize that we are proposing goals, the regulations propose goals. It does not set quotas, and so a company which may not meet its goals can be deemed to be in compliance with these regulations if it has demonstrated a good-faith effort.

Mr. DAUB. That is what I was trying to get at. If you look at section 1863, unlawful employment practices regulation, it says, with respect to Outer Continental Shelf Land Act, enforcement of regulations that shall take such affirmative action as deemed necessary to prohibit all unlawful employment practices and to assure that no person shall on the ground of race, color, creed, national origin, or sex be excluded from receiving or participating in any activity, sale, or employment conducted pursuant to the provisions of the act or the Outer Continental Shelf Land Act. Essentially it says again, deemed necessary to carry out the purpose of this act.

If that is the case, then again, what I am trying to get at—I am not trying to in any way be more than a devil's advocate, figure how we get from theory to reality, bridge the gap to offer the opportunity in a way that is not so quota or percentage overburdensome, if you will. So if only those with capital can acquire the land, then what do they do once they get the lease. You are talking about what happens after that, right?

Mr. JOSEPH. Yes.

Mr. DAUB. How do we get there if that is the law already?

Mr. JOSEPH. The law is a statement of the intention of the Congress. It says that the agencies or departments that deal with leases or holders of authority can promulgate rules to implement that statement of intention. There have to be procedures.

Mr. DAUB. You do not think the current regulation does that?

Mr. JOSEPH. No.

Mr. DAUB. What does it need to do further?

Mr. JOSEPH. What the December OCS rule suggested. There needs to be standards, procedures, liaison people, written plans, reporting, and all of these things in order to implement the act.

Mr. DAUB. Nothing like the western natural gas 15-percent mandate or anything like that, at least in your view?

Mr. JOSEPH. It has been demonstrated time and time again that where there are goals it gives people something to shoot at and something to be assessed by. But those goals are not cast in concrete as quotas. They are simply goals, and there are allowable exceptions where there is a good-faith effort and the goals have not been met. I think people get confused about this. These are goals, and business operates by goals, market goals, production goals, employment goals; so they are accustomed to dealing with goals, but often they do not meet their production or market goals. The same thing can happen here. When a board of directors evaluates its senior management, and it looks at market goals, if there is a good-faith effort and they have not met those goals, they can be deemed to be in compliance. We are talking about the very same thing.

Mr. DAUB. I guess I really appreciate your remarks, but I have trouble with this deemed and compliance business and who is sitting in judgment over that. The early days of an outreach that we believe in, and finally we get to the point where the business of the evaluation subjectively of the word deemed, be it because the economy went bad and you could not get to the goal or the company went broke and you could not get to the goal, or somebody tried to circumvent the goal, and you go to court when the deemed is unenforceable by virtue of the creation of a subjective set of interpretative activity by technocrats is a problem to me.

Mr. JOSEPH. You can call them technocrats——

Mr. DAUB. In the Defense Department it might be one thing, in Energy it might be a different kind of thing, because they are different subjects, they do not relate to 20-percent set-aside, 15-percent goals. I am worried about bridging the gap.

Mr. JOSEPH. I do not think you can apply a kind of thinking to this area that does not apply to other areas. In every area there are standards and goals, and someone has to assess whether these are being met. Whether it is the corporate board of directors or the chief executive officer or whether middle management; at some level there are goals and people are assessing whether or not those goals are met, so a determination has to be made. In this case, those folks who wrote and those who passed the OCS amendments with section 608 felt it was necessary to have national standards because our commitment to promoting the general welfare suggested it and it was in our self-interest and our national interest. I happen to concur with that.

Mr. DAUB. Thank you.

Mr. MITCHELL. Thank you very much. It is good to see you again. I appreciate your taking the time to be with us.

Our next witness is Wallace Green. I might indicate that Mr. Green also served in the Department of the Interior at the time the regulations were drafted and issued. He is now with Abel Corp. Thank you for being here. We have a copy of your testimony.

TESTIMONY OF WALLACE GREEN, ABLE CORP.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. Chairman, members of this distinguished committee, I am honored to appear before you to offer testimony regarding the affirmative action requirements of the Outer Continental Shelf

Lands Act amendments, as embodied in section 604 of that act of Congress.

It was my pleasure to have served in the U.S. Department of the Interior at the time the regulations were drafted and issued to implement section 604. Working under the policy direction of then Under Secretary James A. Joseph, and with the support of the Secretary of the Interior, Department officials developed a proposed rule designed to assure minority- and female-owned business participation in the OCS program. At the same time, staff sought to anticipate and accommodate the concerns of the companies whose activities would be subjected to the regulation. We, therefore, pursued sensitivity and practicality throughout the document. As with any written work, however, there is always room for improvement, and given proper mandate the subject rule might have been simplified without loss of impact if the current administration had desired.

It appears, however, that we are faced with a more basic issue than whether or not the Interior Department, under the stewardship of Cecil Andrus and James Joseph, wrote a rule that is first of all responsive to the act of Congress, second, sensitive to the desires of the firms likely to benefit by this will of Congress, and third, reasonable in the requirements it places on the industry to which it is directed.

We do not need to restate the purpose of section 604. It is, however, worth noting that the spirit of section 604 is consistent with that of similar actions of the Congress regarding minority business participation in the Trans Alaska Pipeline System and the Alaska Natural Gas Transportation System. In both instances, as with section 604 of the OCS amendments, Congress recognized that no existing legislation would protect and assure that contracting opportunities accrued to minority-owned firms. Those who argue that the rule is redundant to existing Federal authorities, or who suggest that its call for affirmative action in contracting is beyond the law, have questioned the wisdom of the Congress itself. I would like to see a rule published and implemented if only to reaffirm that we are still a Nation ruled by laws that protect individual rights, and not by the whims of societal or corporate bias.

As to the desirability of the rule, the contribution—or lack thereof—of minority- and female-owned businesses to the Nation's gross national product [GNP] is the strongest argument I can offer. OCS activity represents growth to these businesses and the communities in which they reside. Successful participation in OCS contracting activity will lead to business growth, which translates to productivity, which yields taxes to local economies, salaries for citizens, and a general improvement in the quality of life.

Mr. Chairman, in a convoluted way I find certain motivation in the new President's administration, but I cannot accept the dichotomy which, on one hand, forces many of us to look toward the private sector for jobs and legitimate business relationships, and on the other hand offers neither appropriate political jawboning nor regulatory incentive to help insure that minorities and women receive a fair share of the benefits derived from the exploitation of publicly held resources.

Under Secretary Joseph often talked about public resources as a commodity in which we all have a stake. I agree. And when such resources are developed for economic advantage, all Americans, as taxpayers, have a right to benefit, a right that must be protected by law and by rule. There is precedent for it, and regrettably our society has not progressed beyond the need for laws and rules to insure the protection of individual rights.

As to the impact of the proposed rule on industry, I would be the first to agree with those companies which took the time to read the rule and concluded that: yes; the Congress expects affirmative action; yes; there is a case for some additional effort to attract minority firms to OCS contracting opportunities; yes; there are probably numerous minority- and women-owned businesses and employees who can help in this important work; and, yes; the rule is needed but might be simplified without reducing its effectiveness.

Unfortunately, however, as I read the comments from industry, I see no indication of their desire to improve the regulation, no recognition of the potential contribution of minority firms, and no embracing of the concept of affirmative action. One could only conclude that industry's view is that the rule is unwanted, and that the Congress overstepped its mark in enacting section 604.

It appears, Mr. Chairman, that acts such as section 604, and those similar ones passed regarding the Alaska Pipeline System, have some common thread that you may wish to address. Proper attention may help avoid the kind of exercise in which we are presently engaged.

My reference is to the fact that each of these actions involves corporate use of Federal authorizations for profit as well as for the benefit of the general public. I propose for your study the development of some general act which would avoid the passage of new affirmative action legislation each time a congressional authorization requires new Federal leases. Such an act would create a situation in which whenever leases and rights-of-way are offered, whether on land or sea, a permanent and acceptable regulatory framework would be in place, and some agency vested with oversight and enforcement responsibility. This would also result in increasing minority- and women-owned business participation in programs such as Federal timber, coal, and other mineral leases, all areas of great profit and opportunity. We made some effort toward this within the Department of Interior in 1979 and 1980, but across the board Federal coordination must be mandated in order to achieve policy consistency and effectiveness in implementation.

Mr. Chairman, because I know that this committee is familiar with the potential of minority business in America, I will not recite the range of services available to companies exploring the Outer Continental Shelf. I will say that on the basis of my experience as a staff member here in the Congress, 4 years in the Department of Interior dealing with the question of affirmative action as it relates to natural resource development, and in my current involvement in the marketing of fossil and synthetic energy resources, I am convinced that it is possible for Government and industry to agree on a means to assure minority participation in the OCS program. What is lacking, however, is an advocate or perhaps referee, who

can take the mandate of the Congress and through consultation and compromise, set out a reasonable and enforceable regulation.

Thank you.

Mr. MITCHELL. Thank you very much.

On page 1 of your testimony:

> As with any written work however, there is always room for improvement, and given proper mandate the subject rule might have been simplified without a loss of impact if the current administration had desired.

Would you spell out for me what you mean by that? Give me an instance in which simplification could have taken place in the rule without diminishing its impact.

Mr. GREEN. The burden of the regulation, the paper requirement itself. We would all endorse any effort to minimize the amount of reporting that would be required by the regulation. And I think that if there had been the kind of dialog between industry and the Department, there could have been a refinement. What we got, of course, was a very sterile process whereby the Government sends out written pieces of paper, the industry attorneys look at that in a fairly isolated situation, and they write down what you would expect them to write down, rather than generating the kind of dialog out of which will come compromise, out of which the two sides will agree that the basic objective is to improve the number of dollars going to minority firms.

Mr. MITCHELL. How often are reports on these aspects required?

Mr. GREEN. It was confined to an annual report based on the various OCS areas that were designated in the final rule.

Mr. MITCHELL. Which presents another problem, really.

Mr. GREEN. Presumably the staffing responsibility in the Geological Survey would be an ongoing monitoring one, but the extensive reports, as I recall them, they would only be required on an annual basis.

Mr. MITCHELL. Even with staff monitoring, it seems to me to set up a situation where an outfit is required to report once a year in its final report, and that final report might be very negative—it might be that we were not able to find any minority firms. Meanwhile a year's work has been completed and you cannot go back and pick up minority firms to do a completed job.

Mr. GREEN. Absolutely right.

Mr. MITCHELL. Do you have any assessment as to how effective the staff monitoring has been?

Mr. GREEN. I think staff monitoring to this point has been nonexistent. The other fact is that the Geological Survey is not equipped in terms of manpower to provide the kind of monitoring enforcement that would be required by a regulation.

Mr. MITCHELL. I will address this to my colleague, Mr. Daub. I followed with interest your discussion with Mr. Joseph, and it just seems to me that this is another missing piece here. You tell somebody that this must be done, that we want to see affirmative action. Then we ask for rules to be prepared and implemented. The drafting of the rules might take 6 months or 9 months. You have lost momentum there with the private sector. That same agency is required to monitor, and I use that word in quotes, most of the agencies say that they are understaffed, cannot do the job, so we

really create an extreme kind of world in which all good intentions are placed constantly in jeopardy.

Mr. DAUB. The ultimate of that probably is to get more of what may be the real perception you had. In the three sentences on page 1 you just first commenced your dialog with the witness, and that is maybe what needs to be done, we need to focus on how to do this instead of the fact that we want to do it. That seems to be clear. The commitment from person to person, director to director, administrator to administrator, president to president, may appear conceptually in words to be different, but once you know you want to be in that ball game, then the key is what simplified way can you actually get to implementation as opposed to jawboning and other ways, because it does not help to just talk about it. You can postpone the potential thrust for 15 years if you continue what we have been doing for the past 4 years.

Mr. GREEN. We have not yet, and I think this relates to the chairman's comment that there is a basic racism issue that we have not overcome, before we get to any agreement as to what the right piece of paper should say, we have not yet agreed on the end. We have not yet agreed with industry or with Government that it is a desirable end to improve the participation of minority businesses in the contracting activities of the Federal Government.

Mr. DAUB. You do not equate that to the broad brush of racism, do you, because that flies in the face of the ultimate goal of competitiveness, too. If the law becomes totally colorblind instead of——

Mr. MITCHELL. Let me interrupt for a moment because he has raised an issue and I want to speak to this before I lose my own thought on it. It seems to me somebody has arrived at a decision as to what is desirable. Congress did. We said this is important to do. So the opposition, and I use that word in quotes, would come not from the Congress, but from those who should implement the law, the executive branch. That is a possibility, that the opposition would come there. And it would also come from the private sector in this case. So the problem becomes how do you get those other two elements working in tandem with the will of the Congress.

You suggested a very interesting thing on page 4: "I propose for your study the development of some general act which would avoid the passage of a new affirmative action legislation each time a congressional authorization requires new Federal leases." You say land, sea, almost air. In general, I think one of the problems is, each time we do something in terms of affirmative action for minority business we have to go through this real long process of seeing that it is implemented or at least that some regulations are prepared to implement it. It might well be that this could begin to get us off the hook if we could come up with some kind of omnibus congressional action or legislation that would deal with these areas, that would all be under Interior.

Mr. GREEN. There are also authorizations in the Department of Transportation and Department of Energy. As we experienced with the gas pipeline, the interagency coordination effort is just a monstrous undertaking, with each agency protecting its turf. It is difficult to get anything done without leadership within the bureaucracy.

Mr. MITCHELL. I would like to get back to you and pick your brain on this.

Mr. DAUB. I offer for your consideration a bill I introduced 2 weeks ago relating to interagency streamlining. It would get rid of the cost-bloating conflicts which always affect every Department's effort to streamline and consolidate. It is a new mechanism, an idea I commend to your attention.

Mr. MITCHELL. That includes the affirmative action?

Mr. DAUB. It includes everything from automotive transportation to all of these things. It is nondescript. It says whatever Government does, this is the way. We do not have a structure in the statutes now that actually has to apply to everything we do for implementation. It is an idea I commend to your attention. It is a new one with a long ways to go yet, but it is a start.

I am curious about your other comment. I want to be very certain that we recognize that sometimes we cut off our nose to spite our face when we stress that the basic commitment must be to affirmative action so described, broadly or specifically, be it in a rule or in a goal, and then when we do not find that we are getting there, we tend to want to categorize any opposition to that as something which it really is not, because I know of people who hold strong views that I suspect are intelligent and well meaning that see a real conflict in the free enterprise, the competitive bid, the ultimate opportunity to give the taxpayer his or her best dollar's result, and sometimes well-intentioned, well-meaning goals that are set, be they equal opportunity or affirmative action. It is not that we maybe have not defeated our own efforts by the morass of rules and regulations that have come out that are so disconnected. Every department has a method to achieve these things, and we find that companies like Cummins probably have nine different departments and programs competing for a mindset in that corporate image of which one is right, which one hits the goal the right way. They end up being frustrated about how to teach it because they have a different set of goals for every contract they go after. I hope that opposition does not get categorized. Your testimony is important to this subject, and I am wondering if another idea might catch your fancy.

What if we offered an incentive like we do a veteran for hiring in preference to the Federal Government. What if we said something to those companies like you have a 5-percent preferential territorial claim to space on the OCS to lease if you have met these goals? If you give incentive to industry to meet the goals instead of saying they got to, but if you do not, you are not going to bid anymore.

Mr. GREEN. With the prior witness, the reference to the leasing of the ocean area, we are not really dealing——

Mr. DAUB. I realize that.

Mr. GREEN. Anyone here who knows the capability of minority business cannot take seriously any discussion of minorities exploring the Outer Continental Shelf.

Mr. DAUB. As I said, if that company is meeting those defined goals, perhaps they have greater opportunity in the original leasing, because their capital formation capability does exceed the goals of most others.

Mr. GREEN. The way I look at it, if you were looking at competitive bids for offshore areas and looking at some basis for deciding which company should receive bids, I would like to see some consideration given to the commitment of those companies to utilize minority firms in the carrying out of that exploration which would give them some leverage, and I would hope, would suggest that that is a more desirable company to be involved in the OCS activity because of a commitment to minority contracting.

Mr. DAUB. That is all I have. Thank you very much.

Mr. MITCHELL. You mentioned incentives, and currently there are a number of Government programs that offer incentives—I do not know of one in the minority business enterprise area that is working. Also, I think of the Youth Incentive Act. It has been in effect 4 or 5 years now. And the companies simply have not utilized it. Whether the incentive is not great enough or whether the paperwork required to show that they are living up to whatever commitment was made is too much, I do not know, but the Youth Incentive Act is one case that sticks out in my mind, that has been absolutely minimal in benefit.

Mr. DAUB. I appreciate your point of view, Mr. Chairman. I would not want to categorize again. You know, when you are talking about Outer Continental Shelf leasing and profit it is like deciding whether you are going to spend your money on photovoltaic or solar or continue to explore for natural gas. We may be in this particular case more successful with such an incentive plan, and I do not know, but I am suggesting an idea that would get at what you are saying in terms of your page 1 and page 4 testimony.

Mr. MITCHELL. I would not reject out of hand any idea, because I see a great future and a grim present for minority businesses right now. We have lost already some of the gains that we have made, and——

Mr. DAUB. I want to testify, Mr. Chairman, that I agree with you, except I got such a refreshing bit of information in my own office. I had the former director of the Kansas City MOCAN, UCAN-type of operation in my office in Omaha, Nebr., and they told me of this great opportunity that occurred since they lost funding, they went to the Kansas City contractors, got a private trust fund started, that they are coming to Omaha, and with my support they will get a trust fund started. They are starting three new businesses in Omaha with part of the funds from the Kansas City trust. I say it is true on the surface, but also in stress times can offer great opportunity, and I see great things happening in minority operations there.

Mr. MITCHELL. I, too, know of success stories. At some point later on, I hope before the end of this session of Congress, I hope to offer a very definitive statement as to the losses minority businesses have incurred over the past year in terms of Government contracting. I mentioned almost peripherally earlier that the Department of Defense has simply consistently reduced its business over the last year, and that is fairly typical I think based on the preliminary data that I have, it is fairly typical of most of the Government agencies.

Thank you very much, sir. Good to see you again.

Mr. MITCHELL. Our next witness is Miss Arlene Mmahat. I hope I am pronouncing that correctly. Thank you very much for taking the time to come to be with us. We have a complete copy of your testimony. You may read your testimony in its entirety or if you so desire you may submit it for the record.

Mr. DAUB. Mr. Chairman, may I interrupt briefly to enter something into the record for staff to consider, and that is that NASA authorizes a dollar incentive in procurement. The incentive goes to the profit line. If the corporation meets the goal, the agency can pay an incentive.

Mr. MITCHELL. Yes.

Mr. DAUB. Maybe there are some opportunities like this that we might explore in these days.

TESTIMONY OF ARLENE MMAHAT, CHAIRWOMAN OF THE BOARD, NEW ERA TUBULARS, INC.

Ms. MMAHAT. I would like to submit my testimony for the record and briefly summarize some points.

Mr. MITCHELL. Without objection, it is submitted in its entirety for the record.

Ms. MMAHAT. We are the first and the only woman-owned company in the industry. My partner, Gayfryd Johnson, and I formed our company 2½ years ago. We incorporated in July of 1979 in New Orleans. We started with the two of us and a secretary; today we have 3 offices and 21 people working for us. We represent three major steel mills, Wheeling Pittsburgh, Republic Steel, Kawasaki. We sell casing and tubing made of steel. We also sell line pipe for Berg Steel, Republic, and Tex-Tube Division of Cyclops Corp.

In order for a supply company such as ours to be considered a bona fide part of this industry it must be a stocking distributor. In order to do that—this has been a very closed part of the industry—you must be authorized by the steel manufacturer. The steel industry has a limited number of distributors for their goods. In the past 20 years, with the exception of several minority companies—each of the major steel companies did name a minority distributor within the last 8 years—there have been no new distributors to enter the industry. We were the first woman-owned one. Having Republic and Wheeling Pittsburgh name us a distributor gave us great visibility and also attested to our seriousness to the industry.

Republic and Wheeling Pittsburgh represent 14 percent of the market in the industry today. When we entered the market, luckily, it took off and drilling became very active, not only on the Outer Continental Shelf, but nationwide. That meant all of the material was allocated to the major oil companies and the existing distributors based on the history they had had over the past year and a half in most cases. We had no history; we had no allocation. It became almost impossible for us to find material through ordinary channels.

We did get a minimal amount of allocation from Wheeling Pittsburgh. Getting more than that minimal amount has been our major problem. The main reason that Republic and Wheeling Pittsburgh named us a distributor was that they were familiar with what was happening with minority firms and the business they had been able to attract from the oil industry, and hearing of the

fact that there were proposed regulations governing the Outer Continental Shelf, they thought there might be room for women to get an additional portion of the market. However, no matter how strong those regulations are in helping people with purchasing, they will be no good unless there is a source of supply for companies to sell.

When we were initially researching this problem, we came to the Department of Commerce to ask them how we could best approach the steel industry. They told us that they would recommend us not approaching them, that we should go to foreign sources, that the domestic market did not want new distributors and they were not going to be interested in us.

We persevered and we put together our financing, which is a major, as you know, stumbling block for new industry. Our industry is extremely capital intensive. You have to have quite a large amount of credit and/or capital in order to order steel from a steel mill. Traditionally, supply companies in the industry not only sell steel pipe such as we, they also sell other products. Rope, soap, and dope is what the industry calls it.

We have been limited in the amount of tons we can sell by the practice of many companies to base the proportion of the business they give to steel distributors on the amount of how much other material they can supply. So in order to overcome this, we have searched for other means of being a service to the industry. We have looked into the special-end area. As the industry drills deeper and deeper and in more hostile environments, where they run into hydrogen sulfide and carbon dioxide, which are corrosives they will require steel with more alloy content, and also with stronger connections between the joints of material. Prior to this year these special joints were controlled by two companies who had the patents on the threads. Recently the patents have run out on some of these joints, and because the industry needs more of this material there is a place in the market for new manufacturers. We have gone to the Japanese source that we have, Kawasaki, to get this special alloy material and we are trying to enter this market in this way.

However, again, the established people are trying to keep us out. I do not know whether regulations could help us in that respect. It may. I do not know. Right now we are relying on the demands of the industry to overcome the opposition of these established companies and to allow us into the marketplace.

Executive Order 12138 which President Carter signed in May of 1978 was the first formal recognition that women needed help and opportunity to enter the marketplace, especially in nontraditional fields. As we have heard today, the Outer Continental Shelf Lands Act which mandated regulations to aid women and minorities was the second step. I know, and I know sincerely, that the idea that these regulations were coming on stream helped us with the steel industry. It also was the catalyst that brought us to the attention of the oil companies. I do not think we would have been seen without them.

Once we were seen and given the opportunity to show what we could do, we have done fine, and I think this would hold true for most woman- or minority-owned companies that get this foothold.

The companies stated that they did not need to be regulated, that they would voluntarily put affirmative action programs in place. In our case they have done this, and this has been helpful in our business.

Not all the oil companies have been responsive, as you also noted earlier. However, it is interesting to me that the ones that have are not solely operating on the Outer Continental Shelf. They are drilling onshore as well as off, and we obtain business regardless of where our material is being used. We feel that given the opportunity that we have so far that we will be able to eventually win over the recalcitrant companies. I think at this point forcing all of them to comply to the regulations as far as with a reporting requirement and goals may be counterproductive. They are doing what they said they would do.

New Era is fortunate that we do have a wide range of companies, and it is interesting to note that some of the ones that we have talked about today have been especially helpful to us such as Amoco, Chevron, Exxon, Mobil, and Union. Each one of these companies have met with us, given us the attention of some of their top executives, and are trying to help us become more active in the industry. They have not given us a certain portion of their business, they have given us the opportunity to earn larger and larger shares, and our proportion of the business has grown with each of these companies over the few years that we have been in business in proportion with the amount of services we can render. I do not think any of us, whether we are women- or minority-owned, are looking for guaranteed business. We are looking for an equal opportunity, and I think that this is a classic case where perhaps the private sector is working. I am not sure it holds true for other companies; it does for New Era. I can only speak from our experience.

[Ms. Mmahat's prepared statement follows:]

PREPARED STATEMENT OF ARLENE MMAHAT, CHAIRWOMAN OF THE BOARD, NEW ERA TUBULARS, INC.

New Era Tubulars, Inc. is the first woman-owned and operated supply company in the U.S. Gayfryd Johnson and I, Arlene Mmahat, founded and incorporated New Era in Louisiana in July, 1979. We own 100 percent of the stock and are responsible for operating the business. Today we have offices in New Orleans, Houston and Dallas and are currently employing 21 people. We are stocking distributors of Wheeling Pittsburgh Steel, Republic Steel, and Kawasaki Steel Oil Country Tubular Goods. We also sell Republic Steel, Berg Steel and the Tex-Tube Division of Cyclops Corp Line-Pipe and W-K-M Valves, well head components and assembled well heads.

In order for a supply company to be considered "bona fide" by the industry, it must be a stocking distributor of oil country tubular goods (OCTG) for at least one of the ten (10) major U.S. steel mills which produce these products. This source of supply is very tightly controlled. Prior to each mill naming a minority-owned distributor during the past eight (8) years, very few, two or three at the most, distributors had been authorized during the preceding 20 years! This is a classic example of the old-boy network at work.

Republic and Wheeling Pittsburgh together represent 14 percent of the domestic industry's production. During the past two (2) years, when all steel pipe has been allocated to the major oil companies and established distributors, New Era has had a minimal amount of material to sell. This is our major problem!

The only reason New Era was considered as a distributor by Wheeling Pittsburgh and Republic Steel was that both mills, knowing that a part of the market was currently being served by minority-owned suppliers, thought that a woman-owned company might have an opportunity for an additional portion of the business. These

mills believed that the proposed regulations which implemented the requirements set forth by the Outer Continental Shelf Lands Act would probably require that business be placed through women-owned companies. May I reiterate that Wheeling Pittsburgh and Republic are the only domestic mills to this date who have named a woman-owned supply company as a distributor of their OCTG. No matter how strong regulations are governing purchasing from minority and woman-business enterprises, they will be of no help, unless there is some way to ensure that MBE & WBE firms have a source of material to sell.

When my partner, Gayfryd Johnson, and I were researching ways to enter this industry, we approached the U.S. Department of Commerce for advice on how to obtain a distributorship from a domestic mill. We were able to see the Department's steel expert, who promptly told us that we would be wasting time by approaching the domestic manufacturers for a source of supply because the domestice industry was not going to deal with a new company.

This industry is extraordinarily capital intensive. For a new company to jump full-steam into all phases of the supply industry is impossible. Traditionally, supply companies not only stock tubular goods, they also own and operate stores which have a myriad of goods ("rope, soap and dope" is the industry term) needed on rigs. It was impossible for New Era to enter this type of operation. Good business practice dictated that we concentrate our capital and energy in performing one function well before diversifying. This has limited the volume of business which we may achieve with some customers because extra tubular business is given to those companies which provide such field service. This is fair and we applaud this policy.

In our effort to expand the service which we provide to the industry, we are concentrating on the different facets our customers' tubular needs. We constantly monitor the market to find areas where additional service or supply will aid our customer: An example is the "specialty end finish" side of the market. As drilling continues to go deeper into hostile environments where sour gas and sour crude are common, the need for tubulars with high percentages of alloy, such as chrome, are required. Special connections on these tubes are also required. In the past, the accepted connections were cut by the two companies (Hydril and Atlas Bradford) who owned the patents on those threads. Recently, some of these patents have expired and new companies are beginning to cut these threads. However, a source for alloy grade tubes is necessary if these companies are to succeed in filling the needs of the industry. New Era is attempting to secure this material from KAWASAKI. We are being opposed by the established special end threaders and their distributors who are trying to prevent us from entering this important market. Would regulations solve this problem? I don't know. I think that the demand of the market place will eventually settle the battle in our favor.

Executive Order 12138 which President Carter signed in May of 1978 was the first recognition that women needed the opportunity to enter non-traditional businesses. More specifically, Congress included non-discrimination portions in the Outer Continental Shelf Lands Act. This directed the Department of Interior to promulgate regulations which would insure that women and minority owned businesses be considered and included in the commercial activity, i.e., the exploration and production of these Federal Lands. Even though the regulations never took effect because of a technical flaw, and even though they have now been nullified, they did in fact serve as a catalyst to bring women-owned business to the attention of the oil companies. These companies voluntarily moved to include women in their existing affirmative action programs.

Not all oil companies have responded positively, but enough have that WBE's can obtain enough business volume to become viable. When WBE's do pay their dues, they will hopefully win the respect and business of the other skeptical companies. Winning over the recalcitrant companies by doing a good job will be quicker way of doing business with them than trying to have government force them to do it. Forcing these companies will be counterproductive. Most have responded. They have a fine record. If we mandate the industry to do the very thing that many are already doing voluntarily, it will certainly discourage the private sector from ever responding so positively to a social need.

New Era is fortunate to have a wide range of customers. We do business with small independent companies as well as with the majors. However, several of the major companies have made a special effort to include WBE's: Amoco, Chevron, Exxon, Mobil and Union Oil all have affirmative action programs in place. Top executives in each of these companies have given their time to insure that New Era is given an opportunity to earn a portion of their business. They are helping us secure more adequate sources of supply, not only to fill their own requirements but also to enable us to better meet the needs of our other customers.

To sum it up, WBE's are not looking for guaranteed business, they are looking for a chance to operate in the market place equally.

Mr. MITCHELL. Thank you very much. You went into business in 1979?

Ms. MMAHAT. Right.

Mr. MITCHELL. What period of time elapsed before you got your first shot with any of these companies?

Ms. MMAHAT. Six months.

Mr. MITCHELL. Six months. And elsewhere in your testimony you indicate that certainly the thought that these new regulations were coming down the pike facilitated your breaking the barrier.

Ms. MMAHAT. Absolutely.

Mr. MITCHELL. No question about that in your mind?

Ms. MMAHAT. No question at all.

Mr. MITCHELL. If there had not been any thought about these regulations, it might have been another 6 months——

Ms. MMAHAT. Yes. Most of the companies we do business with were currently doing business with minority-owned firms, and while they recognized that women were not considered a minority, they did also grudgingly recognize that we were not quite as active in the business world or in nontraditional fields as minorities or white males.

Mr. MITCHELL. I further assume you are taking the position that once you get in, as in your case, then you will get additional business based upon your performance?

Ms. MMAHAT. Right. I think that is true. But how do you get in?

Mr. MITCHELL. Your problem is, how do you get in without the regulation?

Ms. MMAHAT. Yes. This is the position I was trying to describe fairly, and I do not really——

Mr. MITCHELL. I am sensitive to the problems of the private sector. There are institutionalized business practices. We have had this come up time and time again, I have always done my subcontracting with these firms. That is an institutionalized practice, which may be good for the private sector, but it acts as another impediment to the minority, including you here, trying to break into a system. When were you advised by Commerce to go to the foreign markets? What year was that?

Ms. MMAHAT. Right at the beginning in 1979, looking to see before we had approached Wheeling Pittsburgh. It was very discouraging, I have to say.

Mr. MITCHELL. Commerce offered no advocacy role for you?

Ms. MMAHAT. No.

The Interagency Council on Women's Business Enterprise was helpful in giving us not an advocacy point of view, but advice on where to go and how to start a business. Also, the SBA we went to, and it was more or less a finding your way. I am sure this is again I am quite sure classic, of where to go and who can be of help. I do not think anyone can be of help with the steel industry. That should be a major focus.

Mr. MITCHELL. The individual sale is the only approach with the steel industry?

Ms. MMAHAT. Yes.

Mr. MITCHELL. Except that that approach is buttressed a little bit by affirmative action programs?

Ms. MMAHAT. Right.

Mr. MITCHELL. Have you done any business directly related to the Outer Continental Shelf?

Ms. MMAHAT. We have sold material that is used in drilling on the Outer Continental Shelf. What we sell is, any well that is drilled, the casing physically keeps the hole open, and the tubing is used to return the product to the surface, whether it be gas or oil. So you do not know always where the material you sell is going to be utilized.

Mr. MITCHELL. I guess that almost answers my second question, and that is the oil companies that are doing business with the Outer Continental Shelf, that are involved there, are those the companies that are showing some responsiveness to you, or is it related to other than Outer Continental Shelf?

Ms. MMAHAT. It is related to other—of the ones—I have a booklet of customers we do little amounts of business with a lot of firms. The ones—if we used the ones that I mentioned in my testimony, Amoco does little offshore. Exxon does more. Mobil, as you know, does. But you can judge by the proportion. Those figures are available of the amount of exploration a company does onshore versus offshore.

Mr. MITCHELL. Thank you. I must say that I do take issue with your recommendation at the end, that winning over the recalcitrant companies by doing a good job would be a quicker way of doing business with them. I take issue only because of the enormous length of time I have spent in this area, since I have been in the Congress.

Ms. MMAHAT. I think your experience is much greater than mine.

Mr. MITCHELL. It has just been on many occasions a horrendous experience. I would like to cite by way of illustration the Minority Purchasing Council, which now has another name. It was headed by Gus Marusi, president of Borden's company at one time. He plugged away getting firms to join and they showed a dramatic improvement in the procurement. Private-sector, no regulations applicable there. But the fact of the matter was that it was only a small percentage of those companies that were in the minority purchasing council which made the improvement. It made the whole array look good, but Mr. Marusi was a man who was very committed, and he lamented over the fact that he simply could not get the members of that council to agree to give a fair shake.

Ms. MMAHAT. I am familiar with the councils in both New Orleans and Houston, and I find that so many of the people who are involved are not truly committed.

Mr. MITCHELL. I cited the national council, but the Texas council has developed a good record, but not necessarily commensurate with the firms alleged to be members of the council.

Ms. MMAHAT. There are people on that who do business with us and are very active. It works both ways.

Mr. MITCHELL. For awhile I have to stand in opposition to your position.

Mr. DAUB. How did you get into this business, get the idea to do this?

Ms. MMAHAT. Living in Louisiana, the energy industry is very visible. My partner and I did a market study of our area to see what would be a feasible business to go into, and we began studying and touring steel mills.

Mr. DAUB. Had you ever been in this or a related business before in terms of your employment or family enterprise or anything like that?

Ms. MMAHAT. My partner's family had.

Mr. DAUB. Did you have one possible idea once you developed your market plan that there was one company that you could get started with and get business?

Ms. MMAHAT. We thought that, personal contacts. Unfortunately, that has not been proven to be true.

Mr. DAUB. Is your biggest problem that the industry has a ration system for orders?

Ms. MMAHAT. The amount of material that the market can produce is limited, and when they are drilling as actively as now, in order to fairly distribute it, they allocate.

Mr. DAUB. Are your 21 employees mostly salespersons?

Ms. MMAHAT. Of those, eight are salespersons.

Mr. DAUB. What is your male-female employment ratio?

Ms. MMAHAT. We have 18 females and 3 males.

Mr. DAUB. Pretty good. I agree with your last paragraph, by and large, to counterpoint with the chairman. He and I probably agree that that would be the goal ultimately. Have you ever had any contracting business with the Government, State or Federal?

Ms. MMAHAT. No. We have bid, but never received it. Interestingly enough, the complete line-pipe business is going directly between the mills and the contractor. There is no hope for anyone to come in between there.

Mr. DAUB. I appreciate your testimony, and apparently you have picked an industry that has some potential, and your growth factors look good. I am sure if 21 employees are there you have been aggressive in the marketplace and recognize the opportunity for a female-owned business to get somebody's attention. I hope you will look at minority employment of others in your business as you grow, and that the Government itself becomes a little bit easier to deal with in the next 4 years.

Ms. MMAHAT. We do have minority participation, too.

Mr. MITCHELL. Mr. Hiler, do you have questions?

Mr. HILER. No questions.

Mr. MITCHELL. Thank you very much. I will think about my opposition to your point of view, but it remains in place for a while.

[Ms. Mmahat submitted the following additional testimony:]

NEW ERA TUBULARS, INC.,
Houston, Tex., December 2, 1981.

Congressman PARREN MITCHELL,
House Small Business Committee,
Washington, D.C.

DEAR CONGRESSMAN MITCHELL: I had the privilege of testifying before your Committee on Thursday, November 11, 1981, concerning the need for regulations to implement the anti-discrimination provisions of the 1978 amendments to the Outer Continental Shelf Lands Act.

Almost simultaneously with the hearings, Secretary of the Interior Watt issued a news release saying that he was in fact going to issue new regulations anyway, and which, seemingly, almost made the purpose of the hearings moot. The timing of this release prevented my covering its contents in my testimony.

I am sending this communication to add to my testimony, and I would appreciate your making it a part of the official record. Assuming that Secretary Watt does begin the process to reissue the regulations calling for affirmative action on the Outer Continental Shelf, I urge that the Interior Department consider the following suggestions:

(1) ALLOW THE OIL AND GAS INDUSTRY TO HAVE INPUT INTO THE PROCESS OF FORMULATING THE REGULATIONS

Since a large part of the energy industry is willing to voluntarily comply with the purpose of the regulations, the Interior Department should invite representatives of the energy industry to sit in as consultants when gathering the data on which to base the regulations and do specifically solicit input from members of all the industries that the regulations will affect. This situation virtually cries out for cooperation between the government and industry. If the views of both groups are considered, it will have the effect of assuring that the final regulations will be reasonable and practical and the necessary cooperation will be given by the industry.

(2) ALLOW VOLUNTARY COMPLIANCE

That the final regulations give the various companies in the industry a chance to be exempted from all detailed technical compliance requirements if, in fact, the company is voluntarily doing what the regulations seek to accomplish. The object should be to accomplish the purpose of the Outer Continental Shelf Lands Act, and not to make an entire industry spend money complying with needless technical requirements.

(3) ASSURE AN ADEQUATE SOURCE OF SUPPLY

That the Department realize that it will be frustrating to and unfair to the Energy Industry if it is required by the Government to purchase a certain amount of materials and goods used on the Outer Continental Shelf from MBE's and WBE's without the Government assuring that these groups will be able to obtain an adequate source of supply to sell to the Energy Industry. Past versions of the regulations have affected the oil and gas companies who hold leases on the Outer Continental Shelf (OCS), but any new regulations should affect the manufacturers and fabricators who undertake to have their product(s) accepted for use on one of these leases. It is unlikely that a MBE or WBE would be a manufacturer(s) of goods used on the OCS but will likely be supply companies' and manufacturer's representatives. Unless these manufacturers, who use supply companies and agents to sell their products, also allow WBE's and MBE's to sell their products in addition to the male and non-minority owned and managed companies, the oil and gas companies will be frustrated in their efforts to comply with the purpose of the regulations.

Thank you for the opportunity to testify before your Committee and to submit these additional ideas for your consideration.

Sincerely,

ARLENE MMAHAT,
Chairman of the Board.

Mr. MITCHELL. Mr. Mackey is our next witness, chairman of the board of Smith Pipe Co. Good to see you again. You are still a hero in Baltimore because of your stellar athletic performances with us.

Unfortunately, we have not received copies of your testimony. Are they in the mail?

TESTIMONY OF JOHN MACKEY, VICE PRESIDENT, SMITH PIPE CO., HOUSTON, TEX.

Mr. MACKEY. They are in the mail.

Mr. MITCHELL. I will ask you to make a statement then. We would like to make sure that we get the written testimony as quickly as possible.

Mr. MACKEY. I would also like to correct that I am not the chairman of the board.

Thank you for extending the invitation to be here today. I have been asked to testify because the Department of the Interior has rescinded an internal regulation, 43 CFR 35, concerning nondiscrimination against minorities and women business enterprises in the Outer Continental Shelf leasing activities, which was instituted in December 1980, and rescinded I think a few months ago.

The Smith Pipe Co. has and is successfully engaged in selling pipe to oil companies drilling in the Outer Continental Shelf. We were successful before December 1980, and after 1980, and now in the sales to these oil companies.

The major oil companies and many of the independents have instituted their own effective minority business programs, and we feel that they will be responsive to minority companies with or without the reinstitution of the Department of the Interior's minority business regulation.

We disagree with common grouping of women- and minority-owned businesses in DOI's 49 CFR 35, and wherever else it may exist in the Federal Government regulations, because it dilutes the responsibility and the level of commitment of companies to minority businesses, and allows them to shift many of their procurement dollars slated for the disadvantaged businesses to women-owned businesses. Therefore, I am against the reinstituting of that regulation as it is now.

I am for the Federal Government continuing—well, basically, let me just say this, that we are totally for the Federal Government nurturing the increase of prime contractor sales to disadvantaged female-owned businesses. However, that effort should be totally separated from a prime contractor's responsibility to provide increased contracts to minority businesses.

I am for the Federal Government continuing a strong program of Federal regulations requiring private companies who receive contracts with Federal funds to spend a lot of those dollars on some subcontracts and procurement with minority firms. After all, despite the best intentions of any large company, we must remember that there was very little business done with minority companies before the Federal Government stated these incentive policies on behalf of minority businesses, so the motivation may fade despite the best intention if the Federal regulations are totally ended.

Mr. MITCHELL. Thank you. I tried to listen very carefully, but I think I detected a conflict in your testimony. In the latter portion you said that you are squarely on record for the Federal Government continuing to push for minority business in the private sector.

Mr. MACKEY. That is correct.

Mr. MITCHELL. And further that you feared even though a company might be doing well in terms of affirmative action, there is a possibility of backsliding; is that correct?

Mr. MACKEY. That is correct.

Mr. MITCHELL. Yet, at the beginning of your testimony, it seems to me you indicated that you did not want the regulations continued with reference to the Outer Continental Shelf.

Mr. MACKEY. No, what I am really saying is that what we really want is a separation of minority and female businesses. We feel that there is a place for both, but we do not feel that they should be lumped together.

Mr. MITCHELL. But in your statement you just referred to minority business in general when you talked about a continuing role for the Federal Government; otherwise, there would be some companies that had performed positively who might renege on a commitment. You made that statement with reference to all minority businesses. That was separated out from your discussion about females. Yet, at the first part of your statement, you said you had done business with the oil companies and you think they have a real good commitment, and you indicated that you did not necessarily want to see regulations continued for the Outer Continental Shelf. Did you mean to say that?

Mr. MACKEY. What I really meant to say is that that particular regulation as it was pointed out to us at our company was the regulation that lumped female and minority businesses. So, what I am talking about specifically is that area of the regulation that has to do with the lumping of minorities with females. I feel that the females should definitely have their own, but not necessarily lumped with minorities.

Mr. MITCHELL. If females were not included in the regulation, then you would want it to remain in place; is that correct?

Mr. MACKEY. I think that females should be included separately, but not grouped together as a minority.

Mr. MITCHELL. Let me try it another way. Theoretically we are separating them out from the present regulations.

Mr. MACKEY. Right.

Mr. MITCHELL. With that theoretical separation, would you support or oppose the regulations governing the Outer Continental Shelf?

Mr. MACKEY. I would support it.

Mr. MITCHELL. How long has Smith been in business?

Mr. MACKEY. We started in business in 1974.

Mr. MITCHELL. It seems to me, in the back of my mind, it is one of the bigger companies in the minority business world. It is in the top 100 minority businesses; is it not?

Mr. MACKEY. Yes.

Mr. MITCHELL. Which means that by virtue of having gotten in, in 1974, you have had a long time of experience in dealing with these various companies; therefore, that track record has been established, which means that perhaps Smith can compete more closely in the so-called free enterprise system by virtue of its good work and by virtue of its longevity in being in business, successful business.

The question that comes to my mind is, I wonder whether a new company, a new pipe company with a good track record but small, capable of doing the good job, would have as much success as Smith has had in dealing with these companies? What would be your opinion on that?

Mr. MACKEY. I think in today's environment it would be very difficult. What we must remember is that George Smith, who is the president and owner of our company, had been in the oil patch for

30 years before he opened the doors in 1974, and right now, pipe is on allocation and it is very difficult to find enough pipe. So there are a lot of reasons why it would be very difficult for a pipe company starting today.

Mr. MITCHELL. I must say that I know Mr. Smith, and certainly I think much of the success comes from just the sheer dint of his personality, where he has just operated with these companies, banging on doors throughout the years, and has really established some friendships. That is not taking away from the quality of the work done, but I am indicating a very forceful personality that has developed a system of contacts in the industry since 1974.

Mr. HILER. Mr. Mackey, how many employees does Smith Pipe Co. have?

Mr. MACKEY. About 100, 125.

Mr. HILER. What kind of sales do you have?

Mr. MACKEY. $55 million to $60 million.

Mr. HILER. The Smith Pipe Co. sells pipe—could you describe for me a little bit what the Smith Pipe Co. does?

Mr. MACKEY. We have the Smith Pipe Testing Co., which hydrostatically tests pipe, and we have the Smith Pipe Co., which is a supply company that supplies all kinds of tubular goods, valves, fittings, flanges, and other items to the oil industry.

Mr. HILER. Then you buy most of the products you sell from other businesses?

Mr. MACKEY. Yes. We buy from manufacturers.

Mr. HILER. Do you have an active program that you buy from other minority businesses?

Mr. MACKEY. Yes; we do.

Mr. HILER. You mentioned that you felt women should be separated out from minority enterprises for the purposes of this regulation, and I think you mentioned each place where the same terminology existed in Government regulation today. In terms of procurement, how would you go about doing that? How would you design the law that would say that?

Mr. MACKEY. I would not want to design the law, but let me just give you an example.

If a major company decides that they are going to have a minority program, and that decision is to spend 15 percent of that budget with minorities, what I am saying is that I would like to see that 15 percent, that 20 percent, or that 25 percent or whatever as designated to go directly to minorities. I think that for women-owned businesses, if there is an additional 25 or 15 or whatever percentage, that it should be separated out. Together, we would probably be talking about 30 percent, 15 for minorities and 15 for women, rather than 15 percent being diluted by adding women.

Mr. HILER. If the company were willing to do that?

Mr. MACKEY. If the company was willing to do that.

Mr. HILER. Do you think that inherently it is the job of Government to tell a business what percentage of their business they should be putting into different areas?

Mr. MACKEY. Well, I think that in dealing with the minority sector that if the Government does not and just leaves it to the best efforts, in a lot of cases they will not allocate any.

Mr. HILER. Might not women say the same thing, or maybe handicapped individuals?

Mr. MACKEY. They might.

Mr. HILER. What if the proposal came forward that company *x* agrees to specifically try to allocate 15 percent to minority businesses. I think minority in the sense that it is used here is considered traditional minority business, and disadvantaged business, which includes women. If we agree to separate out women from minorities, we will cut the 15 percent in half, 7½ percent apiece. How would you view it then?

Mr. MACKEY. I would not like that, and that is how I view it now.

Mr. HILER. I think we in Government get into very tough straits where we begin to tell a business where they have to do their contracting. We have done it to a certain extent, up to a certain percentage. But after a while, would minority businesses then say OK, we think there should be a separation between Hispanic and black? Would you say that should exist?

Mr. MACKEY. No; I have no comment on that.

Mr. HILER. Thank you, Mr. Chairman.

Mr. MITCHELL. Thank you.

I just wanted to advise that earlier in the year several of our female colleagues in the House came before this committee—Congresspersons Heckler, Boggs, Fiedler, and I think one other person—and they all testified to the effect that they would support a separate Women's Minority Enterprise Act, fully funded and fully staffed, because they did not want to see a dilution of the efforts on behalf of minorities at the time. We did have that hearing, and that was the position that they took.

Thank you, Mr. Mackey, for your testimony. Please send it to us in writing.

[Mr. Mackey's prepared statement follows:]

PREPARED STATEMENT OF JOHN MACKEY, VICE PRESIDENT, SMITH PIPE CO., HOUSTON, TEX.

Chairman Mitchell, we of The Smith Pipe Companies would like to extend our sincere appreciation for the leadership and effective service which you have rendered to the cause of minority business development and parity in this great nation. The dedication with which you and other members of this committee have addressed the issue of increased minority participation in the American free enterprise system has been fundamental to creating a national atmosphere in The Smith Pipe Companies and other minority companies can obtain fair access to which the business marketplace and prosper.

We are therefore, pleased to participate in these hearings, and express our corporate position of strong support for the continuation of federal regulations establishing minimum standards for minority business marketplace for the following reasons. First, there was virtually no access to the marketplace for most minority businesses before the commencement of federal programs, policies and regulations to provide minority businesses with the access and resources to compete. Second, during the past several years of increasing federal commitment to full participation of minorities in the economic process of this nation, minority business revenues rose significantly. We at The Smith Pipe Companies are committed to the free enterprise system but we also are aware that the system is not entirely self regulating: Some regulations are vital. Just as the government today, despite the drive for trimness and minimum interference in private affairs, will not abolish the Security Exchange Commission, so we at The Smith Pipe Companies feel that the government rules of fair play are necessary to guarantee continued fair access and participation in the national marketplace by minority businesses in the future. We feel that not only are the interests of The Smith Pipe Companies and other minority companies

served, but also, the national interest in a strong diversified economy is also ensured.

We would also like to render here a few comments on the specific area of minority business participation in the petroleum industry, including the Outer Continental Shelf Leasing lease operations. First, there are no minority owned companies who have drilling leases. That fact alone says something about the need for government to regulate equal opportunity for business development over the long range. In the much smaller arena of supplying oil companies with suppliers, The Smith Pipe Companies has done business with several of the major companies. Although we can report that several of these major companies appear to have, in recent years, developed a genuine commitment to increase their purchases from minority and female owned companies. We cannot guarantee that the commitment will be there ten years from now if federal regulations are dropped. It must be noted that we are not implying any more lack of good intent than we would by saying current compliance with the S.E.C. means we can now eliminate that regulating mechanism. The Smith Pipe Companies can also report that there are also petroleum companies, currently not heavily engaged in Outer Continental Shelf leasing activities, that still demonstrate little actual sharing of their purchase needs with minority suppliers and also little intent to do so in the future.

For these companies, minority business federal subcontracting requirements remain even more essential as incentives if they are to sell to the government or become engaged in other government contracting activities in other agencies.

Mr. Chairman, we therefore, hope that the Department of Interior and all other departments and agencies at the federal, state and local levels of government maintain strong and fair regulations to ensure the full participation of minority and female owned businesses in this great nation's economy. We hope that these regulations promote private sector policies in which both minority and female owned businesses can develop, after years of exclusion, without undue competition with each other over private sector purchasing policies inadequate to support the needs of a strong national economy to include increasing business participation from all sectors of our population. And we support the government policies which, in great measure, nurture these private sector attitudes. The permanent entrenchment of these government policies, regulations and incentives ensures the long range growth of a truly free enterprise business environment.

Mr. Chairman, The Smith Pipe Companies have consistently maintained a philosophy of self-sufficiency in the classical free enterprise spirit. Nonetheless, we feel that it has been the diligence of our federal government in creating the incentives for private enterprise to accept our competitive zeal which has created the atmosphere in which we can compete. Thomas Jefferson once said "Eternal vigilance is the price of liberty", and we at The Smith Pipe Companies are certainly grateful to you, sir, your committee and all those in government, legislatures, executive branches and bureaucracies who maintain the atmosphere of truly free competition in the American economy.

Sincerely,

JOHN MACKEY, *Vice President.*

Mr. MITCHELL. There is some followup that must be done as a result of the hearing this morning. Early on I read the letter from Secretary Watt indicating that he was going to reconsider his former position, and he has ordered the writing of regulations to assure nondiscrimination against minority businesses. I think that we have to extract from this hearing this morning immediately some of the recommendations that have been proffered and be in contact with Mr. Watt to make sure that that kind of input is made in his writing of the regulations. Certainly the staff will follow through, and I am sure both minority and majority staff are interested in this. We are interested in your recommendation, Mr. Green, about a general approach, so that each time we go into a new venture we do not have to come up with separate affirmative action programs.

I thank all who participated this morning. Each time we have a hearing it is always very beneficial to me. I want to assure you that we shall be on top of the new regulations, because for my part I would want to see the strongest, most effective regulations possi-

ble in order to insure that minorities, including women, will be full participants in this multibillion-dollar project. It would be a shame for the Nation if we proceeded with this project and ended up with exclusion of minorities.

Thank you very much for your participation. The hearing is now adjourned.

[Whereupon, at 11:45 a.m., the subcommittee adjourned, to reconvene subject to call of the Chair.]

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